

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

[REDACTED]

[REDACTED]

DOCKET NUMBER: 97-01621

COUNSEL: None

HEARING DESIRED: Yes

DEC 11 1998

APPLICANT REQUESTS:

1. Correction of his Officer Selection Brief (OSB) to reflect the correct duty organization, command level, and academic education.
2. A new Promotion Recommendation Form (PRF) be prepared with a Definitely Promote (DP) recommendation.
3. Direct promotion to the grade of lieutenant colonel with a date of rank (DOR) as if he had been selected for promotion by the Calendar Year (CY95) Central Lieutenant Colonel Board.
4. Or, in the alternative, correction of his OSB to reflect the correct duty organization, command level, and academic education; his PRF be changed to a DP recommendation; and, that he be granted a Special Selection Board (SSB).

APPLICANT CONTENDS THAT:

His OSB for the CY95 board stated that his duty title was "Staff Judge Advocate" and that the organization was a "RES READINESS SQD" while the unit he served was the 439th Airlift Wing. The OSB did not reflect his Army Reserve service from **May** 1979 to Aug 1983 despite the fact that a decoration from that time period was included in the package presented to the board. The OSB failed to show his **LL.M** degree in Environmental Law from [REDACTED] University which he received in 1993 despite the fact that it was shown on the preliminary brief that he was given to review. He also contends that he did not receive a copy of his PRF 30 days prior to the board, as required by AFR 35-10, paragraph 4-9. If he had known he did not receive a DP recommendation, he could have exercised his right to send a letter to the board.

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In support of his appeal, applicant provided a six-page affidavit, copies of his Officer Effective Reports (OERs)/Officer Performance Reports (OPRs), a copy of his prior AFBCMR appeal, and other documentation relating to his appeal.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The applicant is Total Active Federal Military Service Date (TAFMSD) is 8 Oct 83. He is currently serving on extended active duty in the grade of major, effective, and with a date of rank (DOR) of 1 May 90..

The Personnel Data System (PDS) reflects the applicant's OER/OPR profile since 1984 as follows:

PERIOD ENDING	OVERALL EVALUATION
7 Apr 84	1-1-1
7 Oct 84	1-1-1
7 Apr 85	1-1-1
9 Dec 85	1-1-1
9 Jun 86	1-1-1
5 Jun 87	1-1-1
17 Feb 88	1-1-1
17 Feb 89	Meets Standards
17 Feb 90	Meets Standards
16 Feb 91	Meets Standards
14 Jun 92	Meets Standards
14 Jun 93	Meets Standards
14 May 94	Meets Standards
14 May 95	Meets Standards
14 May 96	Meets Standards
10 May 97	Meets Standards

AFBCMR Memorandum 95-02564, dated 22 Nov 96, directed the 5 Jul 94 entry under the Assignment History Section of the applicant's CY94A OSB be corrected to read "W/B" under the "CMD LVL" and "439th Airlift Wing" under "Organization" and the entry "SQ" that follows the organizational title should read "Wing." The Air Force indicated that this correction was made in the PDS by the office responsible for updating duty history; however, the correction was directed *after* the CY95B board so the original information was still included on the CY95B OSB for the 5 Jul 94 assignment history entry. The Air Force further indicates that to compound the situation, the applicant had additional updates to his assignment history prior to the CY95B board. These entries (22 Oct 94 and 31 Jan 95) also reflect "CMD LVL" as "AFR," "Organization" as "Reserve Readiness Mobility Sq" (22 Oct 94 entry and "Reserve Spt Sq" (31 Jan 95) entry.

The AFBCMR granted the applicant a SSB by the CY94A lieutenant colonel board based on the information contained on the CY94A OSB. The SSB convened on 2 Jun 97; however, the applicant was nonselected for promotion to lieutenant colonel.

Applicant has four promotion nonselections by the CY94A (11 Oct 94), CY95B (27 Nov 95), the CY97B (2 Jun 97) and the CY97E (8 Dec 97) lieutenant colonel boards.

AIR FORCE EVALUATION:

The Chief, Appeals & SSB Branch, AFPC/DPPPA, reviewed this application and indicated that Air Force Manual (AFM) 36-2622, Volume I, 1 Feb 96, paragraph 6.20.3.3.8.2., states, in part, "In system changes can be made if the various source documents reflect an error was made." The applicant is contesting the validity of his unit of assignment, and he believes the OSB is incorrect; however, there are no source documents to support his position. Assignment information is based on unit manning document authorizations and accurately reflects the unit of assignment. While the applicant and the AFBCMR finds this to be misleading, it is nonetheless correct. If the applicant believed the assignment history to be misleading, he was entitled to write a letter to the board president as instructions attached to the Officer Preselection Brief (OPB) reflect. DPPPA's records indicate he did not avail himself of this entitlement. Further, the 14 May 95 OPR that met the CY95B board clearly shows "951st Reserve Support Squadron (AFRES) with *duty at the 439th Airlift Wing.*" If the Board directs additional corrections to the applicant's assignment history for the 22 Oct 94 and 31 Jan 95 entries, subsequent entries (which are made at base level) will undoubtedly still reflect information from the unit manning document and this could result in follow-on appeals on the part of the applicant.

Regarding the PRF issue, while the applicant believes he did not receive his PRF within the time limits outlined by regulation, DPPPA must point out that AFR 36-10, paragraph 4-9a(6), states, "The senior rater provides the ratee a copy of the PRF approximately (emphasis added) 30 days before the central selection board." What the applicant does not say is what he did to expedite receipt of his PRF. While they realize the applicant did not entirely control the situation, he could have made inquiries to let the senior rater know he was interested in receiving the PRF as soon as possible, or he could possibly have postponed his leave. The senior rater was not required to hand deliver the PRF to the ratee, nor was he required to check the ratee's leave schedule. Furthermore, while the applicant appears to be focusing on when he received his PRF, he does not provide any evidence that the PRF is inaccurate as written.

While the applicant contends his LL.M degree was missing from his OSB even though it was listed correctly on the OPB, **DPPPA** found that the applicant was only partially correct in his contention. The OPB did not reflect the accurate information. Had the applicant been diligent in his perusal of the OPB, he could have discovered this error and taken action to have it corrected prior to the board. Further, this issue did not surface in the applicant's appeal of his nonselection by the CY94A board, nor did he surface the issue prior to SSB consideration for the CY94A board. **DPPPA** contends that the applicant had ample opportunity to ensure the academic education was corrected prior to his promotion considerations. Department of Defense (**DOD**) Directive 1320.11, paragraph D.3., states, "A Special Selection Board shall not, under Section 628(b) or 14502(b) of reference (b) [Title 10, United States Code], consider any officer who might, by maintaining reasonably careful records, have discovered and taken steps to correct that error or omission on which the original board based its decision against promotion."

The applicant's Army Reserve service from May 79 - Aug 93 is not included in his duty history because it is not part of his Air Force duty history (AFM 30-130, Chapter 18-18e). This information has never been included on any of the applicant's OSBs, nor should it have been. Again, this is another issue the applicant could have addressed in a letter to the board president had he exercised this option.

Regarding the applicant's request for direct promotion to the grade of lieutenant colonel, an officer may be qualified for promotion, but, in the judgment of a selection board—vested with discretionary authority to make the selections—he may not be the best qualified of those available for the limited number of promotion vacancies. Absent clear-cut evidence the applicant would have been a selectee by the CY95B board, **DPPPA** believes a duly constituted board, applying the complete promotion criteria, is in the most advantageous position to render this vital determination. The board's prerogative to do so should not be usurped except under extraordinary circumstances. Further, to grant a direct promotion would be unfair to all other officers who have extremely competitive records and also did not get promoted. **DPPPA** does not support direct promotion.

In summary, while it may be argued that, since the AFBCMR-directed correction to the 5 Jul 94 assignment history entry was not accomplished until after the CY95B board, then SSB by that board is warranted, and **DPPPA** does not espouse that argument. The applicant received SSB consideration by the CY94A board with the corrected assignment history (his in-the-promotion zone (IPZ) consideration) and was nonselected. It would not follow that the same correction would enhance his record sufficiently to warrant promotion by the CY95B board (above-the-promotion zone (APZ)).

A complete copy of the Air Force evaluation is attached at Exhibit C.

The Chief, Reports & Queries Team, AFPC/DPAIS1, also reviewed this application and indicated that assignment information is based on unit manning document authorizations and accurately reflect the unit of assignment. While the OPR states that the applicant had duty at the [REDACTED] Airlift Wing, the fact remains that he was assigned to the [REDACTED] Reserve Readiness Mobility Squadron, which later became the [REDACTED] Reserve Support Squadron. In addition, Block 9 (PAS Code) of the OPR assigns the applicant the MAJCOM (major command) identity defined as OM for AF Reserve. Thus, his duty command levels reads OM. DPAIS1 recommends denial of applicant's request to change his duty history.

A complete copy of their evaluation is attached at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant reviewed the Air Force evaluations and provided a five-page rebuttal.

Applicant's complete response, with attachments, is attached at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. Applicant's contentions are duly noted. However, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. We note that the applicant received SSB consideration by the CY94A board with the corrected assignment history and was not selected for promotion. We are not persuaded that the same correction would enhance his record sufficiently to warrant promotion by the CY95B board. Therefore, in the absence of clear-cut evidence that the omission of this information was the basis for his nonselection, we are in agreement with the comments of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought. In addition, we have no basis upon which to recommend that he be directly promoted to the grade of lieutenant colonel.

4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without counsel, would not have materially added to that understanding. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

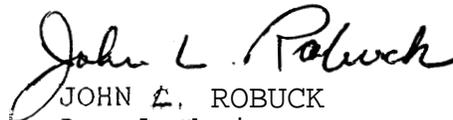
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 30 September 1998, under the provisions of Air Force Instruction 36-2603:

Mr. John C. Robuck, Panel Chair
Mr. Kenneth L. Reinertson, Member
Mr. Mike Novel, Member
Mrs. Joyce Earley, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 22 May 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPPA, dated 25 Aug 97.
- Exhibit D. Letter, AFPC/DPAIS1, dated 12 Sep 97.
- Exhibit E. Letter, AFBCMR, dated 22 Sep 97.
- Exhibit F. Letter fr applicant, dated 16 Oct 97, w/atchs.


JOHN L. ROBUCK
Panel Chair